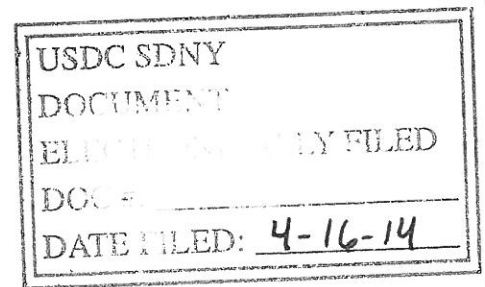


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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:
LUIS ENCALADA, FLORINEL AILINCA, :
ALEJANDRO ANGELES, BENJAMIN :
GUTIERREZ, JUNIOR PENO, MOISES :
PEREZ, KAREEN SANCHEZ, FEDERICO :
SCARRO, RADOLFO TELES and :
ANGELICA VASQUEZ, :
:
Plaintiffs, :
:
-against- :
:
SDNY 19 MAD PARK, LLC, d/b/a SD26, and :
ANTONIO MAGLIULO, :
:
Defendants. :
-----X

13 Civ. 1926 (PAC)

SUMMARY ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Pillinger Miller Tarallo, LLP (“PMT”), counsel for Defendants SDNY 19 Mad Park, LLC (“SDNY 19”) d/b/a SD26, an Italian restaurant in Manhattan, and Antonio Magliulo (“Magliulo”), the restaurant’s manager, move the Court (1) to permit PMT to withdraw as counsel due to an alleged conflict of interest, and (2) for a 60 day stay so that Defendants may retain new counsel.

The jury trial in Plaintiffs’ FLSA action against Defendants is scheduled to begin in approximately one month, on May 19, 2014. On April 1, 2014—almost on the eve of trial—PMT submitted an order to show cause seeking to withdraw as counsel. On April 3, 2014, after holding a conference during which the Court heard, *in camera*, certain details of the claimed conflict of interest, the Court signed PMT’s Order to Show Cause, staying the action pending a final determination of the motion.

Plaintiffs do not oppose Defendants' motion, but note their suspicion that Defendants' motion was a tactical maneuver to delay trial. (Pl.'s April 9, 2014 letter.) Plaintiffs suggest that PMT be relieved as counsel for SDNY 19, and not for Magliulo.

The conflict of interest that PMT alleges arises from a separate legal action filed in 2012. In that action, Hind El Achchabi, who holds an 80% membership interest in SDNY 19, has sued Magliulo and his wife for breach of fiduciary duty and breach of contract, among other claims, based on self-dealing and mismanagement of the restaurant.

PMT's grounds for asserting a conflict on the verge of trial are shaky at best. In the same affirmation that PMT submits to support its order to show cause, Stephen Kahn of PMT admits that PMT was retained to represent Defendants in this action pursuant to a \$100,000 policy limit which has now been reached. (Kahn Aff. ¶ 4.) PMT also provides no explanation why a reasonably diligent attorney would not have discovered this conflict until just before trial.

The Court acknowledges that the other lawsuit may present a conflict for joint representation, and since the motion is unopposed, the Court grants PMT's motion to withdraw as counsel for SDNY 19. There is no reason, however, that PMT cannot continue to represent Magliulo individually in this action. PMT does not represent either of the parties in Achchabi's lawsuit against Magliulo. PMT does not point to any privileged information about SDNY 19 or Achchabi that PMT has learned through representing the restaurant that creates a conflict with its defense of Magliulo in this action. Magliulo would likely know any such information about SDNY 19 already, since he and his wife own a 20% membership interest in the restaurant, and he runs the restaurant on a day-to-day basis. PMT instead alludes to information about Magliulo that could provide fodder for Achchabi's lawsuit against him, which PMT would have to disclose to Achchabi if it continues to represent SDNY 19. This one-way disclosure problem is

solved by allowing PMT to withdraw as counsel for SDNY 19, but to continue representing Magliulo.

CONCLUSION

For the foregoing reasons, the Court grants Pillinger Miller Tarallo, LLP's motion to withdraw as counsel for SDNY 19. The motion to permit Pillinger Miller Tarallo, LLP to withdraw as counsel for Magliulo, however, is denied. This action is stayed for 45 days so that Defendant SDNY 19 may retain new counsel. The conference scheduled for this Thursday, April 17, is therefore marked off the calendar, as is the trial scheduled to begin May 19. A conference to discuss next steps shall proceed on Monday, June 2, at 4:30pm.

Dated: New York, New York
April 16, 2014

SO ORDERED



PAUL A. CROTTY
United States District Judge